United States Postal Service *and* National Postal Professional Nurses, a/w Mail Handlers Division of the Laborers International Union of North America, AFL-CIO. Case 5-CA-11693(P)

April 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 30, 1981, Administrative Law Judge John M. Dyer issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent had violated Section 8(a)(5) and (1) of the Act in two respects: (1) by not informing the Charging Party Union of its decision not to pay certain wage increases to bargaining unit employees, and (2) by not paying those increases to unit employees. For the following reasons, we reverse both of the Administrative Law Judge's conclusions.

As more fully explained by the Administrative Law Judge, the facts show that U.S. Postal Nurses Association Local 1 was certified by the Board on December 26, 1978, as bargaining representative for various of Respondent's registered nurses, excluding certain nurses working in two areas in the State of Florida. In March 1979,[1] the members of the certified union voted to affiliate with the Mail Handlers Union, and the name of the certified union was changed to that of the Charging Party Union (the Union) here.[2] Also in March, the Union's president wrote Respondent and requested, *inter alia*, to be informed of "any proposed actions or policy changes" affecting the registered nurses bargaining unit. The president further requested to meet with Respondent's representative prior to any such changes. In a written response, also in March, Respondent agreed to notify and consult with the Union pursuant to its obligation under the Act before making any changes in the registered nurses' terms and conditions of employment. On June 1, the Union's chief negotiator requested Respondent to begin bargaining on a contract for the registered nurses no later than June 20; negotiations started on July 6.

The instant case concerns three wage increases granted by Respondent to nonbargaining unit personnel but denied to the registered nurses represented by the Union. It is undisputed that three pay raises of 3 percent each, effective June 2 and October 6, 1979, and January 26, 1980, were given to all nonbargaining unit EAS-13[3] employees, but were not given to the registered nurses represented by the Union. The registered nurses, prior to the Union's certification, had been in the EAS-13 wage scale schedule. Respondent never formally notified the Union of the three wage increases for nonbargaining unit personnel nor did it notify or bargain with the Union about the denial of these pay raises to the registered nurses in the bargaining unit. The parties stipulated that the registered nurses did not receive the pay raises solely because the parties were bargaining on an initial contract. Respondent also stipulated that if the registered nurses had not been represented by the Union, and had remained in the EAS-13 pay schedule, they would have received the raises that other employees in that pay schedule received when those employees received raises.[4]

In response to the complaint allegation that Respondent's failure to bargain with the Union over these increases, and to grant them, violated the Act, Respondent argued that, in its March 15 letter to the Union, it had pledged that it would make no unilateral changes in the registered nurses working conditions without bargaining first with the Union, as the Union itself had requested. Hence, Respondent argued that the parties had agreed to maintain the status quo with respect to the registered nurses. Respondent defined the status quo as the wages in effect for the registered nurses in December 1978 at the time of the Union's certification. The Union, in contrast, argued to the Administrative Law Judge that the status quo meant "the wages generally in effect for all EAS-13 employees and that by not granting the general wage increases to the nurses which it gave to all other EAS employees, Respondent did alter the 'status quo.'"

[1] All dates hereafter are in 1979 unless otherwise indicated.

[2] On November 9, the Regional Director issued a Decision and Amendment of Certification to reflect the affiliation and name change.

[3] "EAS" stands for "Executive Administrative Salary Schedule," a pay schedule used by Respondent.

[4] The registered nurses, however, did receive various merit increases which had been scheduled prior to the Union's certification. They continued to receive wages at the EAS-13 pay rate which was effective in December 1978 when the Union was certified. They were, however, put into a separate schedule code for wages in October to reflect their pay status.

The Administrative Law Judge concluded that Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Union about the three pay raises. The Administrative Law Judge found that all EAS-13 nonunit employees historically had the same wage scale and that Respondent's unorganized employees were "accustomed" to receiving the same raises everyone else similarly classified received. He then determined that the "status quo" for the registered nurses was the EAS-13 pay scale and any general wage scale increases given to employees in that classification.[5] He found that Respondent's refusal to grant these wage increases to unit employees "affected" them, and he also found that Respondent's decision not to inform the Union about the nonunit employees' increases, and the fact that the nurses were not receiving those increases, reflected an "explicit decision to conceal the facts [of the increases] from the Union." He further found that this concealment was indicative of bad faith in bargaining. This was so, according to the Administrative Law Judge, because the Union supposedly thought the unit employees would receive all increases granted the EAS-13 employees and Respondent's alleged decision to "conceal" the fact that this was not the case put the Union at a disadvantage in formulating contract proposals. As the Administrative Law Judge saw the situation, "[c]learly the Union is entitled to know what the present and foreseeable wage structure for a classification of employees is in attempting to formulate its proposals and here this was deliberately hidden from it." In light of this conclusion, the Administrative Law Judge found an 8(a)(5) violation in Respondent's "decision and action in not informing the Union of its decision not to pay wage raises"; he also found an 8(a)(5) violation in Respondent's "not paying the raises to the unit employees." Respondent excepts to these conclusions, and contends, *inter alia*, that it was under no obligation either to notify or to bargain with the Union over the change in nonbargaining unit pay rates or to give the various pay raises at issue to bargaining unit employees. We find merit in these exceptions.

The Board has long held that, absent an unlawful motive or a context of unfair labor practices, an employer is under no obligation to grant wage increases to organized employees which have been granted to unorganized employees.[6] Indeed, generally, the granting of new benefits to unorganized employees but not to represented employees has not been held, in and of itself, a violation of the Act.[7] And recently the Board has stated with respect to discretionary raises that "[r]equiring [r]espondent during negotiations to continue giving raises to employees . . . at times and in amounts unrestricted by a clearly established pattern, is tantamount to licensing it to grant them unilateral wage increases, contrary to *N.L.R.B.* v. *Benne Katz, etc. d/b/a Williamsburg Steel Products, Co.*, 369 U.S. 736 (1962)."[8] Notwithstanding this precedent, the Administrative Law Judge found a violation in this proceeding apparently because of his finding that the Union and the bargaining unit employees would nonetheless "assume" that the unit employees would receive the increases at issue. We reject this conclusion.

In the instant case, the record shows that Respondent's practice has been to treat represented and unrepresented employees differently. While Respondent has bargained for contracts calling for particular raises at particular times for union-represented employees, Respondent has granted its unorganized employees wage increases at irregular intervals. Indeed, the evidence is uncontradicted, and the Administrative Law Judge found, that there has been no pattern to increases provided nonbargaining unit employees by Respondent. Indeed, Respondent has historically changed nonbargaining unit employee wage schedules when it saw fit to do so. Notwithstanding this past practice, the Administrative Law Judge appears to have decided that, while the registered nurses could not anticipate when any increases would be granted because of the random nature of the increases, they nonetheless expected to receive *whatever* increases *were* granted nonbargaining unit employees until a contract was concluded. This finding, however, totally ignores the reality that, as of December 1978, the registered nurses were no longer nonbargaining unit employees and the raises that applied to that group no longer applied to them. As of December 1978, the nurses were included in a certified bargaining unit. Thereafter, Respondent was under an obligation to bargain with the nurses' designated bargaining representative, upon request, on a contract, which would include wages. In such circumstances, the registered nurses could not, or should not, have expected to receive any general wage in-

[5] In so concluding, he relied on the fact that prior to the Union's certification the nurses had been in the EAS-13 classification, and had then received the wages for that classification. Because they were not told that they were not being treated the same as EAS-13 employees after the certification, the Administrative Law Judge concluded they would assume that their pay rate would be the same as employees similarly classified, unless a contract called for a different wage scale.

[6] *Shell Oil Company, Incorporated and Hawaii Employers Council*, 77 NLRB 1306 (1948); *Chevron Oil Company, Standard Oil Company of Texas Division*, 182 NLRB 445 (1970).

[7] *The B. F. Goodrich Company*, 195 NLRB 914 (1972).

[8] *The Ithaca Journal-News, Inc.*, 259 NLRB 394, 395-396 (1981).

creases given nonbargaining unit employees if those increases, as here, were decided upon after the Union's certification. As Respondent indicates, "by voting to be represented by the Union, the nurses made it clear they no longer wished their wages to be controlled by an EAS-13 or any other schedule, but preferred instead to negotiate them on their own."

In sum, the fact that, prior to unionization, all employees of the same pay schedule and rank received the same *general* increases is of no importance here as these increases were randomly given. Once the Union was certified, the registered nurses could not expect to receive all those random increases while the Union was also bargaining with Respondent over a new contract. Moreover, it follows that, since there were no "proposed actions or policy changes" which affected the bargaining unit, Respondent was under no obligation to inform the Union of the change in the terms and conditions of employment of the nonbargaining unit employees. Thus, we conclude that, under the circumstances here and absent evidence of animus or of contemporaneous unlawful conduct, Respondent had no duty to notify the Union of the wage increases to nonbargaining unit employees, or to bargain with the Union about, or grant, the wage increases to unit employees. Accordingly, Respondent has not violated its duty to bargain in good faith as alleged in the complaint, and we shall dismiss the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JOHN M. DYER, Administrative Law Judge: On November 15, 1979,[1] the National Postal Professional Nurses, a/w Mail Handlers Division of the Laborers International Union of North America, AFL–CIO, herein called the Union or the Charging Party, filed a charge against the United States Postal Service, herein called the Postal Service or Respondent, and with the Union's amended charge filed January 18, 1980, allege that Respondent violated Section 8(a)(1), (3), and (5) of the Act. The Regional Director for Region 5 issued a complaint on January 31, 1980, alleging that Respondent refused to bargain in good faith with the Union for a certified unit of employees and unilaterally refused to grant scheduled wage increases because the unit employees had voted to be represented by the Union.

[1] Unless otherwise specified, the dates herein refer to 1979 and the first 2 months of 1980.

Respondent's answer admitted the receipt of the charges and the jurisdiction of the Board and, during the hearing in this matter, stipulated to the status of the Union and the Union's certification as the collective-bargaining agent for a unit of registered nurses excluding certain nurses in Jacksonville and Miami, Florida. Respondent raised four affirmative defenses as well as denying that it had violated the Act in any manner.

The principal issue is whether Respondent's course of conduct in not advising the Union and in not giving to members of the bargaining unit the pay raises it was giving to all other nonrepresented employees in Respondent's EAS pay scale violated the Act as a refusal to bargain in good faith with the Union and as violations of Section 8(a)(3) of the Act. After considering all of the aspects of this case, I have concluded that Respondent breached its duty to bargain in good faith with the Union by not advising and in effect concealing from the Union its decision not to pay such raises to the unit employees and that such conduct worked to the detriment of the Union in its negotiations with Respondent and violated Section 8(a)(5) and (1) of the Act. I do not find that the conduct violated Section 8(a)(3) of the Act. All parties were afforded full opportunity to appear, to examine and cross-examine witnesses, and to argue orally at the hearing held in Washington, D.C., on September 11, 1980. Briefs from Respondent and General Counsel have been received and considered.

Upon the entire record in this case including the exhibits and the testimony I make the following:

FINDINGS OF FACT

I. COMMERCE FINDINGS AND UNION STATUS

Respondent, as an independent establishment of the Government of the United States, is engaged in the operation of various facilities throughout the United States in providing postal services for the Nation, and is under the jurisdiction of the National Labor Relations Board by virtue of Section 1209 of the Postal Reorganization Act (PRA) and is engaged in commerce and in operations affecting commerce as defined in the Act and Respondent so admits and I so find.

Respondent admits, and I find, that the Union herein is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Background and Undisputed Facts*

The U.S. Postal Nurses Association Local 1 was certified by the Board for a unit of "all registered nurses employed by the U.S. Postal Service; excluding registered nurses employed at the Employer's General Mail Center in Jacksonville, Florida, and at the Employer's Biscayne facility in Miami, Florida, head nurses, medical officers, all other employees, other professional employees, and guards and supervisors as defined in the Act" on December 26, 1978.

The bargaining unit consists of about 215 employees and at the convention held in March 1979 the certified

union felt that it needed affiliation with a larger organization in order to undertake bargaining and met with a number of postal unions. After hearing from them, the members of the certified union voted to affiliate with the Mail Handlers Union and thereafter a new constitution was drawn up and the name of the certified union was changed to the present name of the Charging Party.

Respondent was notified that Lonnie Johnson of the Union would negotiate on behalf of the Union and Respondent raised a question regarding the change of name and the designation of Johnson. The president of the Charging Party, Ocie Perry, on June 18, answered the inquiry setting forth the manner in which the affiliation had come about and notifying Respondent that Johnson was to be the principal negotiator for the Charging Party. Further objections were raised by Respondent and a petition was filed by the Charging Party with the National Labor Relations Board to amend the certification. Following further objections by Respondent the Regional Director issued a Decision and Amendment of the Certification to the Charging Party's name on November 9, 1979.

On March 1, 1979, Ocie Perry wrote the Postmaster General stating that the certification had been received for the unit and that they wished to bargain in the near future. She further stated:

> As the national president of USPNA, I would like to request that I be advised and notified of any proposed actions or policy changes that would affect the USPNA Bargaining Unit. I further request a meeting with you or your representatives before any such actions are initiated or implemented.

On March 15 the Respondent replied:

> Consistent with our obligations under the National Labor Relations Act, the Postal Service will notify and consult with the United States Postal Nurses Association before making any changes in the wages, hours, or terms and conditions of employment of members of the bargaining unit you represent.

Lonnie Johnson, on June 1, following the affiliation, wrote to Respondent requesting that bargaining begin no later than June 20. Negotiations between the parties began around July 6.

On May 16 the Assistant Postmaster General in charge of Respondent's Labor Relations Department sent a memorandum to the director of Respondent's office of compensation concerning the general economic increases for EAS scale nonbargaining unit employees, which raise was to be effective on June 2. That memorandum stated that certain groups of employees, including the bargaining unit herein, would not receive such pay increase. Copies of this memorandum went to certain managerial employees of Respondent, but no copies of this memorandum nor notice of its effect was given to the Union. The 3-percent-pay increase was granted to all other EAS wage schedule employees.

On August 20 in a memorandum to district managers and other managerial persons, Respondent stated that collective-bargaining negotiations were being conducted between the Union and Respondent and until negotiations were concluded or until further notice, the nurses would be excluded from receiving any pay increases except for previously scheduled merit increases and would continue to receive the pay rate which had become effective on October 7, 1978. The Union did not receive a copy of or notification of the effect of this memorandum.

A second general wage increase of 3 percent was given to all EAS employees on October 6, except those exempted from such general increases by the May memorandum. In a memorandum dated October 30, Respondent told its district managers and other managerial employees that a separate schedule code for wages, "G," was to be placed in front of the nurses' wage code which identified them as keeping the October 1978 pay scale and differentiated them from other EAS-13 employees who would continue to receive the general pay increases as they were granted.

Again on January 11 Respondent notified its managerial employees that the nurses in the Union's bargaining unit were to remain at the 1978 pay scale and were to be excluded from the January 26, 1980, general increase of 3 percent which was being given to the EAS wage scale employees.

The union bargaining unit nurses have been in several other pay scales at a grade 13 level before they were placed in the EAS-13 wage schedule on October 7, 1978. Each grade level has a mininum, a midrange, and a maximum pay for the employees in that level. There were other employees besides the nurses who were classified in the EAS-13 level.

The parties stipulated that all nonbargaining unit employees who were in the EAS-13 schedule received general economic increases on June 2 and October 6, 1979, and on January 26, 1980, and that the nurses in the Union's bargaining unit did not receive those raises based solely on Respondent's decision not to pay those raises because the members of the bargaining unit had chosen to be represented by the Union and the Union had been certified and the parties were bargaining for an initial collective-bargaining agreement. Respondent further stipulated that if those in the bargaining unit had not been bargaining unit employees, and had remained in the EAS-13 pay schedule, they would have received the raises that other employees in that pay schedule received on those dates.

Although the parties stipulated that they were bargaining for a collective-bargaining agreement prior to the date of the first raise, the testified fact is that the actual face-to-face negotiations did not begin until July 6, more than a month later.

The parties further stipulated and Respondent stated that it had no documents to demonstrate that it had ever informed the Union that it was not going to make these pay raises to the nurses in the Union's bargaining unit. Respondent makes no claim that it ever notified the Union of its decision not to pay those raises to those individuals.

B. *Contentions, Positions, and Resolutions*

Respondent asserts that the individual employees should have known they were not receiving the raises being granted to other employees and that the fact that a raise was to be given was made known by a cable or telegram sent throughout the postal system in April.

Without introduction of the cable or telegram or a stipulation as to its contents, Respondent asserts that such constituted notice to the Union and that if any unfair labor practice was committed, it was committed on the date of that telegram in April 1979. On that basis Respondent claims that the charge in this case, filed on November 15, is barred by Section 10(b).

However, Respondent admits that it was completely within the discretion of the Postal Service up until June 2, the date the raises were effective, to determine whether it wished to grant such raise to the nurses in the Union's bargaining unit. Therefore if we were to conclude that the date on which the raises were made effective, which would normally proceed the date on which it would be made known to the employees by receipt or nonreceipt of the raises in a paycheck, this effective date would be within the 10(b) period and Respondent's claimed 10(b) defense is groundless. Indeed the fact that there was no notification to the Union concerning the nonpayment of the raise and in effect concealing the fact that it was making this change would have postponed the 10(b) period even further. Respondent did not offer any evidence of how, other than by receipt or nonreceipt of the wage increase that, the employees were notified of it.

The parties agree that the first real discussion concerning the nongranting of these raises took place in a bargaining session on December 19. Prior to that time the then counsel for the Union had written Respondent on November 9 concerning several pay items force nurses in the Union's bargaining unit. One item had been the discontinuance of Sunday premium pay and night-shift differential pay to nurses in several cities with counsel stating that the nurses had been informed they were no longer entitled to such pay because they had organized and were involved in collective bargaining. Counsel stated Respondent had informed him that such discontinuances had been a mistake and that the nurses were entitled to premium pay and the night-shift differential where applicable. The letter then notes that the assignment of a new preface code (referred to above in Respondent's letter to managerial employees on October 30) may have been the trigger which caused this error. Counsel then stated that the Union intended to file unfair labor practice charges because of Respondent's excluding the nurses from the general salary increases which all other EAS-13 employees received and noted that Respondent was not willing to change its position regarding the nonpayment of such amounts. According to this letter, Respondent had told the Union that its defense to such a charge would be that the Union had written a letter demanding that Respondent not alter the nurses' terms and conditions of employment pending bargaining. Respondent made no effort to dispute this document or such a position.

In effect the same claim is made in Respondent's brief in this case where it states that the Union's March 1, 1979, letter, quoted above, asked that no changes be made in the nurses' current employment terms and further that Respondent had replied that it would make no changes. These characterizations of the Union's letter and Respondent's reply are inaccurate. Similarly inaccurate is the further statement in its brief that Respondent had made a pledge not to alter wages, hours, or working conditions of nurses in the bargaining unit and it was enforcing this pledge by not granting the raises.

Basically Respondent says that the "status quo" was the wages that were in effect on the date of certification and it would not thereafter alter them or change such status. The Union is stating that the "status quo" means the wages generally in effect for all EAS-13 employees and that by not granting the general wage increases to the nurses which it gave to all other EAS employees, Respondent did alter the "status quo."

Another of Respondent's affirmative defenses is that the Union waived its right to negotiate concerning the general increases by not raising the question until December 19. It is clear that the Board will not infer a waiver except on very definite, clear terms. Here, there can be no waiver since the Union has not been shown to have any knowledge that Respondent was not going to make the increases to the employees in the unit. The only evidence we have is to the contrary, that is that the Union did not know that Respondent did not make these increased payments to the bargaining unit nurses and the direct statement that the Union's pay proposals for negotiation purposes were based on its belief that all persons within the same pay grade schedule were to get the same amounts of money. Obviously the Union made no knowing clear waiver of the pay increases.

In considering what was the "status quo," we should first consider that Respondent is a governmental organization and as such has a background of paying the same rates nationally to all employees in the same step of the same classification grade. Pay raises as such were granted to all employees in the same classification. With the Postal Reorganization Act and bargaining with unions for differing groups of organized employees, different pay scales were established. However for the unorganized employees Respondent granted general wage increases at irregular intervals to the employees in its various classification scales. Under the classification systems the unorganized employees were accustomed to receiving the same raises everyone else similarly classified received. It was axiomatic that all EAS-13 employees had the same wage scales either under the EAS classification or under the predecessor classifications the nurses in the unit had been in.

The nurses in the Union's unit had been placed in the EAS-13 classification in October 1978 and received the wage scales that were set for that classification. The first general wage increase following that action was the wage increase of June 2, which all employees in the EAS classification system received except for those with a union contract which called for other or different wages and the nurses in the Union's unit. Here, however,

neither the Union nor the affected employees were told that they were not getting the wage increase. The others under contracts would have known what they were getting or not getting according to their contracts.

With such a background, the employees would assume, as would their bargaining agent, that the rate of pay for all employees similarly classified would be the same unless a contract called for a different wage scale. Thus "status quo" to the employees and to the Union meant the pay scale for the classification of the employees and would include any general wage increases which would be applicable to all employees similarly classified.

Respondent, however, states that the "status quo" meant the pay rate at which the employees were being paid when they organized and the Union was certified. Respondent attempted to bolster its contention both in its brief and during the hearing by stating that the Union's March 1 letter was a request that no changes be made in pay, hours, or working conditions of the unit employees and that its reply letter said that it would make no changes. Indeed, Respondent's brief claims it pledged to the Union that it would make no changes and further says the Union conceded it had asked that no changes be made in the current wages or conditions of employment. Respondent's claim appears to be colored by its desires because the Union's March 1 letter was a simple request that the Union be notified of any "proposed actions or policy changes that would affect the USPNA bargaining unit" and a further request for a meeting with Respondent's representatives "before any such actions are initiated or implemented." Respondent's reply to this letter appears to acquiesce in these requests. There is nothing in this case or transcript that demonstrates any such claimed concession by the Union.

In deciding in April not to grant the general wage increase to the employees in the Union's bargaining unit, Respondent determined on a course of action that affected the employees in that bargaining unit. Moreover, it is clear from the testimony that Respondent decided not to appraise the Union of its decision and made no attempt to do so at any time prior to or during the bargaining negotiations, and in fact appears to have made an explicit decision to conceal the facts from the Union.

Respondent relies on *Shell Oil Company, Incorporated and Hawaii Employers' Council, et al.*, 77 NLRB 1306 (1948), and *Chevron Oil Company, Standard Oil Company of Texas Division*, 182 NLRB 445 (1970), in saying it was entitled to withhold wage increases to the bargaining unit employees in the absence of any unfair labor practices. As the Board said in *Chevron Oil Company*:

> It has long been an established Board principle that, in a context of good-faith bargaining, and absent other proof of unlawful motive, an employer is privileged to withhold from organized employees wage increases granted to unorganized employees or to condition their grant upon final contract settlement.

Respondent states that the Board does not restrict the "weapons" that each side brings to the bargaining table and that it could use the weapon of withholding wage increases as a lever in its contract negotiations. In this situation the "weapon" was not shown or demonstrated and the Union did not know it existed until the negotiations were well underway. Here, we do not have a lever being used to push negotiations but rather a stilleto being poised. By the time of the second wage increase effective in early October, but probably not received until late October, it was clear to the Union that Respondent was withholding increases deliberately. However, mistakes were being made on pay as is clear from the November 9 letter of the Union's counsel to Respondent. Other wage amounts including premium pay were being withheld from a large number of nurses by Postal officials in various cities on the assumption that such increases were also forbidden by Respondent. Mistakes are not uncommon and in the absence of a declaration by Respondent that it was withholding these general wage increases specifically and was doing so in an effort to force concessions in trying to reach a contract, the Union had no idea what it was dealing with. As the Union's chief negotiator said, his wage proposals were an effort to improve the pay above the scale which EAS-13 employees were receiving and therefore his proposals were based on what he understood the wage scale to be.

Respondent made no effort to explain why it did not inform the Union of its decision and actions in this regard in spite of the clear request by the Union, as mentioned above.

It ill behooves the Federal Government or an agency or corporation of the Federal Government to use deception and not act with candor in its relations with its employees or their designated bargaining agent. Here Respondent, despite a clear request to it and its reply which apparently acceded to that request, decided and acted in secret on a matter of utmost import to its employees and their bargaining agent and concealed from the bargaining agent its intention, decision, and action. Clearly, the Union is entitled to know what the present and foreseeable wage structure for a classification of employees is in attempting to formulate its proposals and here this was deliberately hidden from it.

In this posture, Respondent would have an advantage in knowing what it was doing about the wage structure of the nurses and its other employees and concerning the wage proposals it would make in negotiations. Conversely the Union's wage proposals would be made without benefit of knowing of the changes in the wage structure for other similarly classified employees and for its own employees. Such a lack of knowledge would be detrimental to the Union in its position as bargaining agent in making contract proposals for its unit and could undermine its status by its being gulled by Respondent in regard to what its wage structure was.

What reason could Respondent have for furtively making these changes and establishing its bargaining position and not openly making such changes and position known to the Union despite its request for such knowledge? Clearly Respondent was not using the raises as a weapon to force a quick compromise since it was hidden. Respondent has offered no reason. When finally asked about the raises, Respondent took the position that all

raises were negotiable but that it was a subject before the Board and relies on the *Shell-Chevron* line of cases.

Respondent's actions as set forth above do not show an intention to bargain in good faith with the Union but rather demonstrates its intention to cozen the Union and gain an unfair advantage in its bargaining relationship. This is not a position for the United States Government or one of its corporations to occupy in dealing with its employees or their lawful representatives.

In these circumstances, I find that Respondent did not deal or bargain with the Union in good faith, and that by its decision and action in not informing the Union of its decision not to pay wage raises despite the Union's request for such information and in not paying the raises to the unit employees Respondent violated Section 8(a)(5) and (1) of the Act.

Under all the above circumstances, I do not, however, find that Respondent violated Section 8(a)(3) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, which have been found to constitute unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, occurring in connection with Respondent's operations as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

The remedy in this situation has to be adapted to the fact that the arbitrator's decision has been embodied in and is a part of the contract between the parties in this case setting forth specific amounts of pay increases which have been given under that document. Under its terms, the general wage increase that was given to other EAS employees effective June 2, 1979, was given to the Union's unit employees effective July 7, 1979.

Having found that Respondent engaged in the violations of Section 8(a)(5) and (1) set forth above, I recommend that it cease and desist from not bargaining in good faith and take the following affirmative action to effectuate the policies of the Act by restoring the "status quo ante." Respondent shall grant and pay to all members of the Union's bargaining unit who were employed between June 2 and July 7, 1979, the 3-percent-pay increase it granted to other EAS-13 employees effective on June 2, together with interest at the current rate as provided by the Board as per *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). I further recommend that Respondent make available to the Board, upon request, payroll and other records in order to facilitate checking the amount of this pay due the employees in the bargaining unit.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Sectinn 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Union.

[Recommended Order omitted from publication.]